

## 37 Am. Jur. 2d Fraud and Deceit § 11

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### Fraud and Deceit

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#### I. Overview

##### A. In General; Definitions and Types of Fraud

### § 11. Other actions as within definition

[Topic Summary](#) | [Correlation Table](#) | [References](#)

#### West's Key Number Digest

West's Key Number Digest, [Fraud](#)  1

"Overreaching" is tricking, outwitting, or cheating a person into doing an act which he or she would not otherwise have done, and it is generally synonymous with fraud.<sup>1</sup>

Unfair competition is another species of fraud, but this is covered in another article.<sup>2</sup>

Promissory fraud is a promise made without any intention of performing it.<sup>3</sup>

#### Observation:

The fraud exception to the parol evidence rule does not permit parol evidence of promissory fraud if the evidence in question is offered to show a promise which contradicts an integrated written agreement; rather, the evidence must tend to establish some independent fact or representation, some fraud in the procurement of the instrument, or some breach of confidence concerning its use and not a promise directly at variance with the promise of the writing.<sup>4</sup>

Corruption and "fraud" are not the same, nor is fraud necessarily included in every instance of corruption.<sup>5</sup>

Fraud and undue influence are not equivalent terms; undue influence may be a species of fraud, or it may exist without any positive fraud.<sup>6</sup> In order to prevail on a claim of undue influence, the following must be proven: (1) opportunity to control; (2) a condition permitting subversion; and (3) activity on the part of the person charged.<sup>7</sup>

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Footnotes

- <sup>1</sup> [Vela v. Marywood](#), 17 S.W.3d 750 (Tex. App. Austin 2000), review denied with per curiam opinion, [53 S.W.3d 684](#) (Tex. 2001).
- <sup>2</sup> Am. Jur. 2d, Trademarks, Tradenames, and Unfair Trade Practices § 84.
- <sup>3</sup> [Alling v. Universal Manufacturing Corp.](#), 5 Cal. App. 4th 1412, 7 Cal. Rptr. 2d 718 (1st Dist. 1992).
- <sup>4</sup> [Alling v. Universal Manufacturing Corp.](#), 5 Cal. App. 4th 1412, 7 Cal. Rptr. 2d 718 (1st Dist. 1992). As to the parol evidence rule, generally, see Am. Jur. 2d, Evidence §§ 1104 to 1116.
- <sup>5</sup> [U.S. v. Worker](#), 90 F.3d 1409, 44 Fed. R. Evid. Serv. 944 (9th Cir. 1996).
- <sup>6</sup> [Welborn v. Welborn](#), 295 Ga. App. 661, 673 S.E.2d 44 (2009).
- <sup>7</sup> [Comeau v. Nash](#), 2010 WY 71, 233 P.3d 572 (Wyo. 2010).

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